



Creating a Sound Administrative Record:

*The Importance of
Records Management
in FOIA B...*



What is Records Management?

- The planning, controlling, directing, organizing, training, promoting, and other managerial activities related to the creation, maintenance, use, and disposition of records.
- The primary purpose of records management is to allow people to find and use information.



What is Electronic Records Management (ERM)?

- ERM is the use of automated techniques to manage records, regardless of their format (e.g., paper, microform, or electronic).
- An ERM system is one in which the records are collected, organized, and categorized to facilitate preservation, retrieval, use, and disposition.
- An ERM product used by a Federal agency should meet the

[DoD 5012.5 Standard for Records Management for Federal Agencies](#)



Why Records Management?

- Contributes to the smooth operation of agency programs by making readily available the information needed for decision making and operational readiness.
- Helps deliver services to businesses, citizens, and governmental offices in a consistent and equitable manner.
- Facilitates the effective performance of programs and activities throughout the



***We all play a role
in effective records
management!***

Why Records Management?

- Protects the rights of citizens, businesses, the agency, and its employees.
- Ensures continuity in the event of a disaster.
- Protects records from inappropriate and unauthorized access.
- Meets statutory and regulatory requirements, including archival preservation, audit, and oversight activities.
- Effective means of maintaining institutional knowledge



The Government's Records Management Expert

- National Archives and Records Administration (NARA):
www.archives.gov: NARA serves as the nation's record keeper.
- NARA's vision is that all Americans will understand the vital role records play in a democracy, and their own personal stake in the National Archives.



NARA

- Approves all records schedules and provides records management training and guidance.
- Manages and operates the Federal Records Centers across the country.
- Manages the Presidential



Key Laws and Regulations

- Federal Records Act of 1950, as amended (44 U.S.C. Chapters 29, 31 and 33)
- E-Government Act of 2002, Section 207
(Public Law 107-347)
- 36 CFR Parts 1220 through 1238
- 18 U.S.C. § 2071




The Federal Records Act of 1950

- Codified in [44 U.S.C. Chapters 29, 31, and 33.](#)
- Serves as the basic law for records management in the Federal Government.
- Establishes the National Archives and Records Administration (NARA) as the lead agency for records management in the Federal government.
- Establishes the basic responsibilities for records management.
- Includes a broad definition of “records” that remains unchanged



E-Government Act of 2002

- Purpose of Section 207 is “to improve the methods by which Government information, including information on the internet, is organized, preserved, and made accessible to the public.”
- Calls for increased use of electronic records management systems to provide citizen-centered government services and places on NARA and other Federal agencies a number of requirements relating to web sites.
- Requires that agencies adopt policies and procedures to ensure that the records management policies and procedures are applied to government information on



Other Laws and Regulations

- 36 CFR Parts 1220 through 1238 includes NARA regulations that affect the records management program of Federal agencies.
- 18 U.S.C. § 2071 establishes criminal penalties for the unlawful concealment, removal, or destruction of Federal records.
- 18 U.S.C. §§ 793, 794, and 798 forbids the unlawful disclosure of certain information pertaining to national security, including defense information and classified information.



Other Guidance

- NARA Guidance and Regulations contain information that is applicable to the records management responsibilities of all Federal agencies.
- NARA Electronic Records Management (ERM) Guidance on the Web has links to all NARA's online ERM guidance.
- Agency Records Management



What is a Record?

- Records include all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them /



What are Electronic Records?

- Electronic records are those that are created, used, maintained, transmitted, and disposed of in electronic form/format.
- The information may be in any form:
 - Word processing files
 - E-mail messages
 - Images of maps or pictures
 - World Wide Web content
 - Computer code
 - Spread sheets
 - Databases





What are Electronic Records?

- Electronic records may be stored in computer memory or on storage media
- They may or may not have paper back
- Electronic records are Federal records in the same way that paper records are Federal records. It is the content, not the format that matters.





FOIA and The Cloud

- Agencies' obligations to follow the Federal Records Act and FOIA do not change as its IT system moves to a cloud environment.
- It is critical to manage and schedule electronic records.
- Responsible for explaining record keeping obligations to a vendor that hosts its data or IT system in its own environment.
- Use a team approach (FOIA, IT, RM) to records management at procurement stage.



Identifying a Record

- Was it created in the course of business?
 - Ex. correspondence, studies
- Was it received for action?
 - Ex. controlled correspondence, Departmental information request
- Does it document activities and actions?
 - Ex. calendars, meeting minutes, trip reports
- Does it support financial obligations or legal claims?
 - Ex. funded award files (contracts or grant files)
- Does it communicate requirements?
 - Ex. policies or procedures
- Are you or your unit responsible for keeping it?
- Is it required by an approved records disposition schedule?



What is a Record Under FOIA?

- Created or maintained by an agency.
- Under agency control at the time the FOIA request is received.
 - No requirement to create records or compile information in response to a request.
 - No need to add explanatory materials to any records disclosed.
 - Records - not information or three dimensional objects.
 - Format choice – must provide the record in any format requested, if record is readily reproducible in that format.



Identifying Non-Records

- Generated and used in agency business, but not records - owned by the agency
- Is it reference material? (Reports written by other agencies, journals and newsletters)
- Is it a convenience copy? (Duplicate copies of correspondence, policies, reports)
 - **Note!** Multiple copies of funded award files may be records.
- Is it a stock copy of a publication?
- Is it a draft or working paper?
 - **Note!** Circulated and/or substantive changes are records



Identifying Personal Papers

- Do not relate to or have any effect upon the conduct of agency business - owned by an individual.
- Documents created before entering government service.
- Private materials brought into, created, or received in the office that were not created or received in transaction of government business.
- Work-related personal documents that are not used in the transaction of government



Records Responsibilities

- Keep “adequate and proper” documentation of official activities.
- Identify records according to the your agency’s records disposition schedule.
- Dispose of records according to an approved records disposition schedule.
- Do not take original records home (or with you when you separate from government service).
- File personal papers and non record material separately from Department records



Recordkeeping Requirements

Recordkeeping requirements will vary depending on:

- The nature of the agency and its mission;
- The information in the records; and
- Laws that established the program the records relate to:
 - Specific legal or regulatory requirements that directly affect the records and their retention, and
 - General legal, fiscal, and administrative



Records Disposition Schedule

- Official policy for records retention and disposal.
 - Identifies and describe all records, including format.
 - Identifies the owner (agency component, division) for some record types.
 - Provides specific retention periods for records disposal.
 - May incorporate General Records Schedules.
 - **Disposition must be approved by NARA.**



Records Retention

- There is no single retention period for all records. Some may have a short retention period, others may have permanent historical value.
- The retention period depends on the records' legal, fiscal, administrative, and/or historical value.
- The appropriate retention period is determined in the appraisal process that takes place during the development and



Federal Records Centers

- Offsite “filing cabinet” for federal records.
 - May be stored with a commercial vendor (Iron Mountain).
 - Distinct from transfer to the National Archives.
- Records in an Federal Records Center remain in the legal custody of the originating agency and are still subject to FOIA.
 - **Agency must recall records to respond to pending FOIA request.**
- Permanent records are transferred to the National Archives.



FOIA Case Files as Records

- Records documenting all actions taken while responding to a FOIA request.
 - Initial request
 - Clarifying letters, including acknowledgements
 - Internal email or documents discussing disclosure determinations
 - Working papers
 - Routing and transmittal sheets
 - Final response letters
- **Your tracking system is not automatically the default!**



Disposition of FOIA Case Files

- **Governed in accordance with GRS - 14, Item 11**
- **Full Grants**
 - Destroy 2 years after the date of reply
- **Procedural Denials**
 - Destroy 2 years after date of reply (if no appeal)
- **Denials in Full or in Part**
 - Destroy 6 years after date of reply (if no appeal)
- **Official File copy of requested records**
 - Dispose of in accordance with approved disposition instruction for the related records or with related FOIA, whichever is later.



Why is this Important to FOIA Processing?

- Ensures a sound administrative record.
- Assists in *de novo* review during the FOIA appeal process.
- Vital to documenting agency action in FOIA litigation.



Agency Contacts

- Effective records management is a collaborative effort.
- Effective records management ensures FOIA Professionals can provide access to agency records in compliance with the law.
- Look to your agency resources for guidance.
 - Agency/component Records Officer
 - Agency Records Management Handbook
 - Existing Records Schedules
 - Applicable General Records Schedules
 - NARA Web Resources (www.archives.gov)



Best Practices

- Do not destroy paper or electronic records.
- Remember that records retired to an FRC are still agency records subject to FOIA.
- Create a team approach to records management: FOIA, IT, Records Manager, Vendor.



Summary

- All agency records should be scheduled as either permanent or temporary records.
- NARA approves records retention and disposition schedules.
- Agencies retire records to NARA/FRC (physical custody); however, agencies still process FOIA request for access to these records.
- Agencies accession records to NARA (legal custody), then NARA processes FOIA request for access to these records.



Questions...

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